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THE FIRST STATE CONSTITUTIONS.

The exalted place which Americans have been accustomed to assign to the Federal Constitution—while contributing to a patriotic appreciation of our general government—has tended somewhat to obscure the great significance which our State constitutions possess, not only as integral elements of our federal system, but especially as factors in the growth of American constitutional law. When the average American thinks of the constitutional law of his country his mind naturally reverts to the written document drawn up by the convention of 1787, and put into practical force at the inauguration of Washington. He is inclined to forget that when our Fathers met together in Philadelphia to "form a more perfect union," they had already before their eyes the written constitutions of thirteen independent States. He would be inclined to question the statement that the most eventful constitution-making epoch in our history was not the year 1787, but an antecedent period extending from 1776 to 1780. While absorbed in the study of the Revolution as

a movement preparatory to the formation of the Federal Union, he may not have fully appreciated the fact that before the surrender of Cornwallis at Yorktown, every American State had already achieved its constitutional independence and had established its own organic law, by which it should not only remain free from the foreign dominion of Great Britain, but should also remain an indestructible unit in the American federal system.

The chief historical significance which attaches to the first State constitutions rests in the fact that they were the connecting links between the previous organic law of the colonies and the subsequent organic law of the Federal Union. They grew out of the colonial constitutions; and they formed the basis of the Federal Constitution, and furnished the chief materials from which that later instrument was derived. In a previous paper* published in this journal it was claimed that the real continuity in the growth of American constitutional law could be seen only by tracing: first, how the charters of the English trading companies were transformed into the organic laws of the early colonies; second, how the organic laws of the colonies were translated into the constitutions of the original States; and, finally, how the original State constitutions contributed to the Constitution of the Federal Union. In the paper referred to the attempt was made to illustrate the first of these stages of growth. It is the purpose of the present paper to illustrate the second stage, namely, the transition from the colonial to the State constitutions.

In tracing the growth of a political system like that of the American States it is often difficult to separate those elements which are consciously derived from a foreign source, and those which are the result of a rational adjustment of means to ends, and which may thus be regarded as original. And it is also often difficult to distinguish both of these elements from those which are the unconscious result of inherited

* "Genesis of a Written Constitution," ANNALS OF THE AMERICAN ACADEMY, Vol. I., p. 529, April, 1891.

political instincts. Often these elements are mixed, being partly derived and partly original, as when an old institution is transformed to meet new emergencies. Often, too, an institution may appear to be the result of direct imitation, when in fact it may be the product of a common race instinct, as in the case of the representative system reproducing itself in all the branches of the Teutonic race. It is also no doubt true that heredity and reason may contribute their influences in the formation of a political institution. The law of historical continuity, or political inheritance, is not inconsistent with the law of historical variation, or political originality. In fact, the greater the accumulations of past experiences, the greater will be the capacity to solve by original methods the problems presented by new experiences. It is therefore folly to suppose that all the elements which enter into the American political system are merely the reproductions or imitations of any foreign models. The American colonists inherited the instincts of the English race. But under new circumstances they were called upon to work out problems which were peculiar to their own political life; and as a consequence of this we find that the constitutional system which grew up on this continent was an American and not a European product. Even those institutions which seem to have a general similarity to those which are foreign have here acquired specific characteristics which distinguish them from those belonging to any foreign country. It is only by studying the circumstances in which any institution, or set of institutions, has taken its rise that we can hope to form an intelligent judgment as to the extent to which it is the result of direct imitation, and the extent to which it is the special product of the time and the place in which it makes its appearance. To suppose that the American constitutional system has been exclusively derived from an English, or a Dutch, or any other foreign source, would be to ignore the political sagacity which the American people have shown from the first, both in the adaptation of foreign

institutions and in the development of new constitutional features to meet the peculiar circumstances in which they have been placed.

In taking a rapid survey of the mode in which the American colonies grew into the American States it will, of course, be possible to consider only the most general and essential features of the political system, as shown in the growth of the legislative, judicial and executive branches of the government. As we trace the various political institutions of the American colonies back to a common source we find that they were in the first instance derived from certain powers delegated by the English crown and embodied in charters granted to trading companies or proprietors. The first colonies, whether they were established by the authority of their superiors, or whether they were organized by their own independent efforts, acquired a form similar to that of the trading company. In its most primitive and typical form the colonial government, like that of the company, consisted of a governor, a deputy-governor, a council of assistants, and a general assembly. In this simple political body there was at first little differentiation of functions. The most important business, whether legislative, judicial or administrative, was performed by the whole corporate body, assembled in a "General Court." Matters of minor importance gradually came to be left to the official part of the body, that is, the governor, the deputy-governor, and the assistants, sitting together under the name of a "Court of Assistants," or "Council." Taking this simple and almost homogeneous political organism as a starting point, it will not be difficult for us to trace the growth of those more complex institutions which characterized the later colonies, and which became embodied in the first State constitutions.

The first important variation from what we have described as the simple and primitive form of the colony was due to the growth of the representative system. It is quite natural to suppose that this system was introduced into the

colonies from England and was an imitation, or at least a reproduction of the English House of Commons. An examination of the circumstances which led to the development of representation in the colonies will show how far this system was an importation from England, and how far it was distinctively American in its origin and character. The idea of representation is, of course, an inheritance from the Teutonic race. It has existed in a variety of forms at different times and in different places. It existed in the Diets of Holland, in the States General of France, in the Cortes of Spain, in the Federal Assemblies of Switzerland. These various representative assemblies were in no proper sense the products of imitation. They rather grew out of the common political instinct, which has everywhere characterized the Teutonic race, of delegating authority which cannot be exercised directly. The enlargement of population must always be attended either by the decay of democratic institutions, or else by the adoption of some form of representation. The special form which representation will assume in any people, which possesses the political sagacity to solve the problems growing out of its own social life, will be determined by the circumstances of time and place. It will be seen that the form of representation which grew up in the American colonies was not a reproduction of the elaborate and comparatively mature system which then existed in England, but was the outgrowth of the simple life of the colonists themselves, and was moreover marked by those inchoate features which distinguish a primitive from a well-developed institution. The need of representation was felt by the colonists as soon as their population became scattered and unable to meet in a single assembly. The system arose from the requirements of the colonists themselves, and was fully established before it was recognized by the English crown.

In Virginia, on account of the scattered condition of the population, the need of representation was felt at the first

organization of the general assembly, and in answer to the demand of the freemen for a share in the government the London Company granted to them in 1619 the right of sending to the assembly two burgesses from each plantation. But the deputies did not, as was the case in the English Parliament, form a distinct body by themselves. They had at first no separate organization or functions. They simply formed a part of the general assembly, which also included the governor, and the council appointed by the company.*

In New England we have more definite records of the exact method in which representation took its rise. The first General Court of Massachusetts, which met in 1630, comprised the governor, the deputy-governor, the assistants and the whole body of freemen.† On account of the sudden influx of population and the rapid growth of towns it became impracticable for all the freemen to meet with the magistrates, whenever laws were to be made or causes were to be tried. The first device which occurred to the perplexed freemen was to delegate to the magistrates, that is, to the governor, the deputy-governor and the assistants, the full powers of government,‡ and this system was practically in force for about three years. The tendency of this arrangement was to make the magistrates, or Court of Assistants, a body representative of the whole body of freemen. The defects of the system became apparent when the magistrates, without consulting the people, used their own discretion in apportioning the taxes among the various towns. The people of Watertown felt this to be a burden, and as a result of their protest, in 1632 it was ordered that there should be "two of every plantation to confer with the court about raising a public stock."§ This was, however, but the beginning of a system of representation, since the persons thus appointed had no authority except to confer

* Stith, 160.

† Massachusetts Records, I., 79; Hutchinson, I., 25.

‡ Massachusetts Records, I., 79.

§ *Ibid*, I., 95.

with the magistrates in matters of taxation. The next step was provoked by the arbitrary regulations which the Court of Assistants saw fit to make in regard to swine trespassing beyond town limits. This crude legislation suggests the primitive life of the colonists, and indicates the purely local causes which contributed to the growth of representation in Massachusetts. In 1631 it had been ordered "that all swine found in any man's corn shall be forfeit to the public, and that the party damnified shall be satisfied."* In 1633 it was ordered "that it shall be lawful for any man to kill any swine that comes into his corn."† In view of these and similar acts, which were regarded as interfering unduly in local affairs, in 1634 twenty-four persons from the various towns appeared before the court and demanded recognition. As a result of their claims it was ordered "that none but the General Court hath power to make and establish laws;" "that there shall be four General Courts held yearly, to be summoned by the governor for the time being, and not to be dissolved without the consent of the major part of the court;" that the freemen of every town choose and send to the General Court two or three persons "who shall have the full power and voices of the said freemen;" and moreover "that all former orders concerning swine shall be repealed," and "that every town shall have liberty to make such orders about swine as they shall judge best for themselves."‡ By these laws representation became assured, but the number of deputies was not definitely fixed. It was, therefore, ordered in 1636 that every town having between ten and twenty freemen send one deputy; those having between twenty and forty, two deputies; and those having over forty freemen, three deputies.§ Finally, in 1639, it was ordered that no town should send more than two deputies to the General Court.‖

* *Ibid*, I., 86.
† *Ibid*, I., 106.
‡ *Ibid*, I., 117, 118, 119.
§ *Ibid*, I., 178.
‖ *Ibid*, I., 254.

By this series of laws representation was gradually established in Massachusetts. But still the deputies did not, as in England, form a distinct body, but continued for some years to sit in the same assembly with the governor, the deputy-governor and the assistants. The introduction of this system was not authorized by the Massachusetts charter; but evidently resulted from the instinctive efforts on the part of the colonists to solve a practical difficulty. It was due to the fact that the people, while clinging to their original and chartered rights to have a share in the government, felt that it was impracticable for all to meet in the assembly; and also, as Mr. Hutchinson says, to the danger arising from leaving their towns destitute of able-bodied men, and their families exposed to the attacks of their savage neighbors.* To one who reads the original records there does not appear the slightest evidence that the people of Massachusetts during this period were ever seized with the ambition—however plausible such an idea may seem to later historians—of reproducing the English House of Commons, with its co-ordinate legislative powers and its complex system of county and borough representatives.

The gradual modification of the General Court by the introduction of deputies did not, however, deprive the whole body of freemen of their right of electing their own magistrates. It was therefore customary for all the freemen of the colony to meet together in the spring at the General Court of Election for the purpose of choosing these officers. But the danger of leaving their towns destitute of men, even during the time of election, was still apparent; and it was therefore made lawful, in 1637, for all freemen to send their votes for election by proxy, instead of bringing them in person.† By these various steps the government of Massachusetts became differentiated into three assemblies: (1) the Court of Assistants, comprising the governor, the

* Hutchinson, I., 36.
† Massachusetts Records. I., 188.

deputy-governor, and assistants, who were elected by all the freemen, and who performed the ordinary business of the colony; (2) the General Court, comprising the same persons, together with the deputies sent by the towns, to which body were referred the more important public matters; and (3), the Court of Elections, to which all the freemen presented their votes, either in person or by proxy, for the officers for the ensuing year.

When the emigrants from Massachusetts fixed their settlements on the Connecticut River, they established by their written constitution of 1639,* a representative system similar to that which had grown up in the mother colony as the result of a succession of separate laws. Representation was also established in Plymouth by an act of 1639; † in Maryland, by an act of the same year; ‡ in New Haven, by the constitution of 1643; § in Providence and Rhode Island, by the legislation of 1647.‖ It would lead us too far into details to trace the circumstances which led to adoption of this system in these various colonies. It is enough to say that the system everywhere grew up as a simple expedient to preserve the rights of the freemen in the General Court after the growth of towns rendered it inconvenient for them to attend in person. The necessity of having a part act for the whole was instinctively presented to the minds of all the colonists; but the particular method of meeting this need was worked out by each colony for itself. They evidently had before their eyes no common model of representation which they were trying to reproduce. The system was marked by specific variations in different places. The number of deputies varied from one or two in Maryland, to six in Rhode Island. Sometimes the deputies were paid, and sometimes they were not; sometimes they were paid by the towns sending them, and

* Charters and Constitutions, I., 250.
† Plymouth Records, XI., 31.
‡ Bozman, II., ch. 2.
§ New Haven Records, 1638-49, 112.
‖ Arnold, I., 202.

sometimes by the whole colony. The growth of the system was attended in the different colonies by various other local features, for example, the use of beans and kernels of corn as a means of depositing votes, the introduction of paper ballots, the right of the deputies to judge of their own election, the right of the deputies to punish an offending member, the right of the governor, or the presiding officer of the assembly, to a casting vote in case of a tie.

The system of representation which grew up in the early colonies under no legal authority of the English crown (with the exception of Maryland, where it was only authorized and not directed), came to be recognized and ratified by subsequent charters. It was ratified in Connecticut by the charter of 1662;* in Rhode Island by the charter of 1663,† and later in Massachusetts by the charter of 1692.‡ In the colonies established after the Restoration in 1660 it became usual for the English king to grant to the proprietor permission to give to the freemen the right to a share in legislation, either in person or by deputies.§ It thus seems evident that the representative system in America had its origin in the peculiar circumstances in which the early colonies were placed. It was the product of the practical instinct of the Teutonic race, which had given birth to a form of representation even before the time of Henry III. or Edward I. It was not established by any charter of the English king, and did not receive a chartered sanction until it had become an established institution in the colonies. It had its own peculiar features in America, which were evidently not patterned after any existing model. It was rather a reversion to an earlier type than a reproduction of an existing one; and was, in fact, more truly representative of the whole body of the people than was the contemporary English House of Commons.

*Charters and Constitutions, I., 252.
†*Ibid*, II., 1598.
‡*Ibid*, I., 949.
§For Pennsylvania, *cf.* Charters and Constitutions, II., 1510; for Carolina, *Ibid*, II., 1384.

We have seen that the colonial deputies did not at first constitute a separate body, but sat in the same assembly with the governor and council. The next modification of the colonial government was due to the introduction of the bicameral system, or the separation of the deputies and magistrates into two co-ordinate bodies. The mere mention of the bicameral system suggests to nearly every mind the division between the English House of Lords and House of Commons; and it has also suggested to many historians the theory that the bicameral system in America was an imitation or reproduction of the bicameral system of England. If it could be shown that this system was established in the colonies by an act of the English crown, or if it could be shown that the English system was in the minds of the colonists when it was established, or if it could be shown that there were no antecedent conditions in the form of the colonial assembly which necessitated or at least led to its division into two branches, there might be afforded some proof of its foreign importation. The mere resemblances which may be traced between two political institutions may afford a presumption, but no positive proof of the derivation of the one from the other. Professor Freeman has shown the danger of inferring imitation from likeness, and has illustrated how similar institutions often grow out of similar circumstances or common instincts.* If it can be shown that the bicameral system in America was due to causes which were peculiar to the colonies themselves, and was the natural development of the special circumstances in which they were placed, and that its constitutional form was distinctly its own, we have no right to say that it was the result of imitation. As a matter-of-fact we find that the separation of the deputies from the magistrates in the colonial assemblies resulted from conditions already existing in these assemblies; and also that the process of their separation passed through inchoate stages which can not

* "Comparative Politics," lect. I.

be traced in the original separation of the Lords and Commons.

The bicameral system in America had its origin in Massachusetts. It is here that we find the specific mode and the successive steps in which it took its rise. We have already seen that directly after the founding of the Massachusetts colony the freemen unwisely conferred upon the magistrates, that is, the Court of Assistants, the entire control of the colony; and that this arrangement remained in force for about three years, when the freemen reasserted their right to a share in the government. During this brief period the magistrates had come to regard themselves as the chief governing power in the colony. Even after the deputies of the towns became associated with them in the General Court the relative powers of the deputies and magistrates were for some time undetermined. In the ordinary transaction of business there was no clashing of interests. But as early as 1634 an antagonism arose between them, when certain people of Newtown asked for permission to remove to Connecticut, the majority of deputies being in favor of granting the request, and the majority of magistrates being opposed to such a removal.* In consequence of frequent bickerings between the two sections, growing out of the undefined character of their relative powers, a compromise was temporarily effected by an act of 1636, which contained the following provisions: "Whereas it may fall out that in some of these General Courts to be holden by the magistrates and deputies, there may arise some difference of judgment in doubtful cases, it is therefore ordered, that no law, order or sentence shall pass as an act of the court without the consent of the greater part of the magistrates on the one part and the greater part of the deputies on the other part; and for want of such accord the cause or order shall be suspended; and if either party think it so material, then there shall be forthwith a committee chosen the one half by the

* Barry, I., 273.

magistrates and the other half by the deputies, and the committee so chosen to elect an umpire, who together shall have power to hear and determine the cause in question."* This was a recognition of the co-ordinate powers of the deputies and the magistrates, while they were both members of the same assembly.

The cleavage which thus began to be developed between the two parts of the General Court was not completed until some years afterward. The continued opposition of the two branches led finally to the law of 1644. At this time the deputies moved that the two orders should sit apart, the magistrates by themselves and the deputies by themselves, and that what one should agree upon should be sent to the other, and if both should agree the act should pass. This motion after considerable controversy and some delay was finally adopted, and the two bodies from that time sat as separate and co-ordinate branches of the general court.† Under the peculiar circumstances and through the successive steps thus described the bicameral system in America had its origin. How far it was the result of foreign influences and how far it was modeled after a foreign type it seems hardly necessary to discuss. Notwithstanding the fact that the "laudable example of other States" is referred to in the law of 1644 as a sort of justification of the final step, it would be difficult to imagine how any institution could be regarded as more indigenous to the soil or more completely shaped by the peculiar circumstances of time and place than was this system as it took its rise in Massachusetts.

In Connecticut the bicameral system had its origin, not from the jealousy between the two parts of the assembly, but from the great confidence which the deputies reposed in the magistrates. In 1678 a law was passed by the General Court of Connecticut constituting the governor, the deputy-governor and the assistants a general council to act for the

* Massachusetts Records, I., 169, 170.

† Hutchinson I., 143; Massachusetts Records, II., 58.

whole body during the recess of the court. "This was," as Professor Johnston says, "the prelude to the inevitable introduction of the bicameral system."* From 1696 it became customary for the acts of the governor and council to be submitted to the whole court for approval.† In May, 1698, the General Court authorized the governor and council to prepare bills which, being approved by the council, should be submitted for the approval of the General Court.‡ Finally, in October, 1698, a law was passed conferring upon the council the name of "upper house," and upon the deputies the name of "lower house," with the provision that all acts should have the approval of both before they were recorded as laws of the colony.§

In the proprietary and royal colonies the division of the two houses had a somewhat different origin. It was evidently the result of two concurrent causes: first, the original custom of the colony, whereby the governor and the council, representing the proprietor or king, were required to submit their proposals to the assembly of freemen; and, second, the successful demands made by the freemen to initiate legislation, which was submitted to the governor and council for approval. For example, in New Hampshire, by the royal commission of 1679, the president of the colony was authorized to prepare and recommend laws, which being approved by the deputies, should also receive the approval of the council. This was supplemented by a law of 1680 which provided that no ordinance should be imposed upon the people but such as was made by the assembly and approved by the president and council.|| This gave the deputies and the council co-ordinate powers in legislation, on account of which they came to be regarded as two branches of a common legislature. From similar causes all the colonial assemblies

* Johnston, "Connecticut," p. 299.
† Connecticut Records, 1689–1706, 156, 202, 205, 222 251.
‡ *Ibid*, 267.
§ *Ibid*, 267, 282.
|| Belknap, I., 171, 179.

except those of Pennsylvania and Georgia, became split into two branches, or houses. As a general rule the division grew out of the distinction already existing in the assemblies between the magistrates and the deputies. The magistrates had acquired an important and distinct place in the government from the powers which they came to exercise during the recess of the General Court, or from the fact that they were separately appointed by the king or proprietor, and thus represented interests distinct from those of the deputies. Their efficient co-operation with the deputies in the harmonious working of the government seemed to require their distinct approval of all public acts. The distinction between the magistrates and the deputies, as two branches of the government, preceded their division as two houses of one legislature.

As a result of the growth of the bicameral system the colonial government, speaking generally, became differentiated into the following organs: (1) a governor, or president (either elected by the people or appointed by the king or proprietor), who acted as the chief magistrate of the colony, and whose place was in case of disability usually filled by a deputy-governor, or vice-president; (2) the council, elected or appointed in the same manner as the governor, which assisted the governor in his administrative duties, and which retained certain of its previous judicial powers, and which also acted as the upper house of the legislature; (3) the deputies, who were chosen by the towns and who formed the lower house of the legislature, and who also in certain cases constituted a tribunal of last resort; and (4) in the republican colonies, the court of elections, at which all the freemen, either in person or by proxy, presented their votes for the elective officers. This frame of government was, in its essential features, common to all the colonies, except Pennsylvania and Georgia, each of which remained through all the colonial period with a single house.

In regard to the electoral franchise, it may be said that the tendency was everywhere to restrict the right of voting.

In the early trading companies the suffrage belonged to all the members of the corporation; and this principle was at first adopted generally by the colonies. But various causes—such as the exclusive spirit of some colonies, the abuse of the franchise in others, and also the interference of the English government—led to the restriction of the suffrage, until at the beginning of the eighteenth century some form of property qualification prevailed in all or nearly all the colonies. In some cases the restriction was due entirely to the act of the colony itself. For example, Virginia passed a law in 1670 declaring that the usual way of choosing burgesses by the votes of all persons who were freemen was detrimental to the colony, and providing that a voice in the election should henceforth be given "only to such as by their estates, either real or personal, have interest enough to tie them to the endeavor of the public good."* In other colonies the restriction was due to the interference of the English crown. For example, in Massachusetts, by the royal charter of 1692, the right of election was limited to "the possessors of an estate of freehold in land to the value of forty shillings per annum or other estate to the value of forty pounds."†

The legislative system of the American colonies was in its core a natural evolution from the primitive colonial government under the influence of ideas and circumstances peculiar to the colonies themselves; and, although possessing some crude analogies to the English parliament, it was in its most important and essential features an American product. The same may be said, with some qualifications, regarding the judicial system. Although the English common law formed a large element in the colonial jurisprudence, and the trial by jury was everywhere insisted upon, the structure of the colonial judicature, especially that of the superior courts, was in large part an outgrowth of the frame

* Thwaites, 62.

† Charters and Constitutions, I., 949.

of government just described. The separation of the different functions of government was of comparatively slow growth. The General Court, or assembly, was at first the ultimate source of all authority within the colony, judicial as well as legislative and administrative. Gradually the Court of Assistants, or council, came to acquire many judicial powers, with an appeal to the General Court. With the increase of judicial business there were established justices of the peace, who held courts in the towns, with quarter sessions in the counties. Passing by many specific differences, the judicial system of the colonies may in general be summed up as including: (1) justices of the peace, usually appointed by the governor, with jurisdiction in petty civil cases; (2) county courts, composed of the justices of the county, with criminal jurisdiction except in capital cases, and final jurisdiction in civil cases not exceeding a certain sum, which varied from £2 in Maryland, to £20 in Virginia; (3) a superior or supreme court, composed of the governor and assistants. This supreme court was sometimes a separate body of judges appointed by the governor, in which case the governor and his council would constitute a still higher court of appeals.* Equity jurisdiction, where recognized, was generally exercised by the governor—in some cases, however, by a specially appointed chancellor. The early judicial power of the assembly was restricted more and more, until it became generally limited to the right of trial or impeachment in grave offences. It would, perhaps, be sufficiently discriminating to say that the inferior courts, composed of the justices of the peace, partook of the character of the corresponding English courts; while the superior courts, with the exception of that of the chancellor, were evidently an outgrowth of the judicial functions of the Court of Assistants and the General Court of the early colonial period.

As we approach the colonial executive we come upon the least American feature of the American colonies. Only in

* Thwaites, 59, 60.

Connecticut and Rhode Island do we find all the branches of the government in harmony with the republican spirit of the colonists. Elsewhere there is nearly always a lack of sympathy and even hostility between the governor and the people. The royal governor may be regarded as the true counterpart of the English king. He it was who enforced the policy of the English crown against the interests of the colonists, and whose foreign sympathies showed him to be the representative of a foreign system of government. It was only with the Revolution that the colonial executive came to be Americanized; and one of the greatest changes effected in the colonial governments by the establishment of the first State constitutions, was that which translated the executive department from a monarchical to a republican form.

The chief cause which led to the formation of the first State constitutions was, of course, the conflict between the colonies and the English king; and especially the hostile attitude assumed by the royal governors. The need of assuming some kind of independent governments was apparent immediately after the breaking out of open hostilities. Even before the Declaration of Independence was adopted by the Continental Congress, such independent governments were assumed by seven States, namely, Massachusetts, in July, 1775; New Hampshire, in January, 1776; South Carolina, in March; Rhode Island, in May; Connecticut and Virginia, in June; and New Jersey, on July 3. Four States followed in the same year, namely, Delaware and Pennsylvania, in September; Maryland, in November; and North Carolina, in December. In the next year, 1777, Georgia followed in February, and New York, in April. Massachusetts, which had, since July, 1775, made its charter the basis of a provisional government, did not adopt her first constitution until March, 1780. A second constitution was framed by South Carolina in 1778, and by New Hampshire, in 1784. All these constitutions were adopted by the

existing provincial assemblies, or by conventions called for the express purpose; and were not submitted to the people for ratification, with the exception of the constitution of Massachusetts and the second constitution of New Hampshire.*

The first State constitutions were in their main features the direct descendants of the colonial governments, modified to the extent necessary to bring them into harmony with the republican spirit of the people. Every State, either in a preamble or in a separate declaration of rights, prefaced its constitution by a statement of the chartered rights upon which it had always insisted; and many of them also declared in general terms the democratic principles which their experience and reason had taught them and which had been partly realized in their previous governments. In their new constitutional enactments there was shown a marked degree of conservatism, changes being made only to the extent necessary to bring the new governments into harmony with republican ideas, without violating too much the recognized traditions of the colonies. In Connecticut and Rhode Island the colonial charters of 1662 and 1663 were retained as the organic laws of these States, with no change except to substitute the sovereignty of the people for that of the king. The bicameral system of the colonies was retained in all the States in which that system had already been developed—Pennsylvania and Georgia still maintaining their old custom of a single house. Massachusetts and New Hampshire preserved the colonial name of General Court (the original name for the assembly in the trading company) to designate the entire legislative department. Five other States retained for the same purpose the

* The assumption of independent governments by the several colonies was made under the recommendation of the Continental Congress, first given to Massachusetts, New Hampshire, Virginia and South Carolina, in 1775, and then extended to all the colonies by the general recommendation of May 10, 1776. The nature of these constituent assemblies is fully discussed in Jameson's "Constitutional Conventions," pp. 111–138.

name of General Assembly, which had been common in the colonial period.

In the organization of the Lower House, which had always been the most republican branch of the colonial government, there were few changes to make except to give clearer definitions to its structure and functions. The members were generally elected annually as heretofore, except in South Carolina, where they were chosen for two years. The method of apportioning the members of the house was more clearly defined, and every State adopted a method which seemed justified by its own experience. The principle that taxation was based upon the consent of the people—which was one of the two or three republican principles that the colonies had inherited from England, and upon which they had always insisted, but of which the English crown had sought to deprive them—was clearly asserted in the first constitutions. In every State also the lower house preserved the right, which had grown up in the colonies, to chose its own officers, to judge of the qualifications of its own members, to make its own rules, to punish an offending member, and in many States to impeach officers of the State for grave offences.* The lower house, as organized in the first State constitutions, was thus a continuation of the lower house which already existed in the colonies, and which in turn had its origin in the separation of the deputies from the magistrates in the early colonial assemblies.†

*For New Hampshire, *cf.* Charters and Constitutions, II., 1287; Massachusetts, *Ibid,* I., 964· New York, *Ibid,* II , 1334; New Jersey, *Ibid,* II., 1311; Pennsylvania, *Ibid,* II., 1543; Delaware, *Ibid,* I., 247; Maryland, *Ibid,* I., 822; Virginia, *Ibid,* II., 1910, 1912; North Carolina, *Ibid,* II., 1412; South Carolina, *Ibid,* II., 1618.

†The following synopsis shows the provisions made by the several States concerning the structure of the Lower House—including the name, method of apportionment, qualification of members, mode and term of election, and qualification of electors:

NEW HAMPSHIRE.—"House of Representatives."—Members apportioned among the towns, one for towns of 150 ratable polls, two for towns of 450, increasing in the proportion of one to 300,—must be of the Protestant religion, inhabitants of the State for one year, residents of the town from which chosen, and

The organization of the upper house required more original legislation than that needed for the lower house, for the reason that wherever it existed, except in Massachusetts, Connecticut and Rhode Island, it was based upon appointment and not upon election. It therefore became necessary to place this body upon a representative basis, and also to preserve the relatively dignified and conservative character which it had always possessed in the colonial times. The relative smallness of its number which had characterized the previous council was maintained, and a

possessed of an estate of £100 in the town, one-half of which must be freehold,—elected annually by ballot, by the male inhabitants of towns, twenty-one years of age, and paying a poll-tax. (Charters and Constitutions, II., 1286.)

MASSACHUSETTS.—"House of Representatives."—Members apportioned among the towns, one for towns of 150 ratable polls, two for towns of 375, increasing at the rate of one to 225,—must be inhabitants for one year of the town from which chosen, and possessed of a freehold of £100 in the town or of any estate of £200,—elected annually by ballot by male persons, twenty-one years of age, inhabitants of the State for one year, and possessed of a freehold estate of £3 annual income or any estate of £60. (*Ibid*, I., 963.)

NEW YORK.—"Assembly."—Seventy members apportioned among the counties, from two to ten from each county,—no specified qualifications,—elected annually (provisionally by ballot) by male inhabitants of the State, residents of the county for six months, of full age, possessed of a freehold within the county of the value of £20 or a tenement of the yearly value of 40 shillings. (*Ibid*, II., 1333.)

NEW JERSEY.—"General Assembly."—Members apportioned among the counties, three from each,—must be a resident of the county from which chosen, and possessed of £500 of real and personal estate,—elected annually by those who have resided for one year in the county in which they vote, and worth £50. (*Ibid*, II., 1311.)

PENNSYLVANIA.—"House of Representatives."—Composed of six members from each county and from the city of Philadelphia,—must have resided in the city or county from which chosen for two years, ineligible to serve for more than four years in seven,—elected annually by freemen, twenty-one years of age, having resided in the State for one year, and paid taxes during that time—the last qualification excepted in the case of the sons of freeholders. (*Ibid*, II., 1542.)

DELAWARE.—"House of Assembly."—Members apportioned among the counties, three from each,—no qualifications specified,—elected annually by the freeholders of the county. (*Ibid*, II., 1242.)

MARYLAND.—"House of Delegates."—Members apportioned among the counties and cities, four from each county and two from the cities of Annapolis and Baltimore,—no qualifications specified,—elected annually *viva voce* by freemen, twenty-one years of age, having a freehold of fifty acres in the county in which they vote and residing there, and freemen having property in the State and having resided in the county in which they vote for one year. (*Ibid*, I., 821.)

VIRGINIA.—"House of Delegates."—Members apportioned among the counties and cities, two from each county and one from the city of Williamsburgh and

higher property qualification was generally required of its members, and in some cases a higher qualification was also required for those who voted for its members. The fact that the States had before them no common foreign model in the reconstruction of this body is evident from the great variety of features which marked its organization in the different States. It might be said that they were common only in that feature in which they differed from the English House of Lords, namely, the fact that they were all based upon popular election. In nearly every other respect they differed from each other, as well as from the English upper house. The number of members varied from nine in Delaware to forty in Massachusetts. The term for which the members were elected also varied from one to five years.

such other cities as the Legislature may designate, provided that such cities cease to send delegates when their population becomes less than one-half of that of any county,—must be residents and freeholders in the county or city from which chosen,—elected annually by such persons as are "at present" qualified to vote. (*Ibid*, II., 1910.)

NORTH CAROLINA.—"House of Commons."—Members apportioned among the counties and towns, two for each county and one for each of six towns (names specified),—must have been residents for one year of the county from which chosen, and have possessed for six months in the county 100 acres of land in fee or for life,—elected annually by ballot by freemen, twenty-one years of age, having resided in the county for one year, and paying public taxes, or in the case of the inhabitants of towns such as possess a freehold in such town, or such as are freemen having resided in such town for one year and paid public taxes—provided that no person be entitled to vote for both town and county members. (*Ibid*, I., 1411.)

SOUTH CAROLINA.—"House of Representatives."—Members apportioned among certain specified electoral districts, with from three to thirty members from each,—must be of the Protestant religion, having, if a resident of the district, the property qualification mentioned in the existing "election act," and if a non-resident having a freehold estate of £3500 in the district from which chosen,—elected for two years by free white persons, who believe in God and in a future state of rewards and punishments, who have resided in the State for one year, and have a freehold of fifty acres or pay a tax equal to a tax on fifty acres. (*Ibid*, II., 1622.)

GEORGIA.—"House of Assembly."—Members apportioned among the several counties (with certain specified exceptions),—must be of the Protestant religion, residents of the State for one year and of the county six months, and possessed of 250 acres of land or some property to the amount of £250,—elected annually by ballot by male white persons, twenty-one years of age, having property to the amount of £10, or if a mechanic a resident of the State for six months. (*Ibid*, I., 378.)

The election of members was sometimes based upon an existing territorial unit (as the town, the parish or the county) and sometimes upon newly-formed electoral "districts." In some States the term of all the members expired at the same time, while in other States the principle of *rotation* was introduced, whereby a part only of the entire membership was renewed at each election. In Maryland the members were chosen not directly by the people, but by a body of "electors" who were themselves chosen by the people. In New Jersey and Delaware the body continued to be called the "Council," or "Legislative Council;" while in the remaining seven States it received the new designation of "Senate." While the application of republican principles required that the body be almost entirely reconstructed in its form, in its functions it still occupied the same relative place in the government which had been held by the previous colonial council. It was a co-ordinate branch of the Legislature, possessing at the same time certain judicial functions, which it had inherited directly from the previous colonial council, and remotely from the Court of Assistants of the early colonial period. The preservation of this judicial power is especially seen in New Hampshire,* in Massachusetts† and in South Carolina,‡ where the Senate retained the power to try impeachments presented by the lower house. In New York the Senate (in connection with the chancellor and the judges of the Supreme Court) was granted similar power to try impeachments, and also to correct the errors of lower courts,§ which latter provision, so far as it relates to the association of the chancellor and the superior judges, may be regarded as suggested by a corresponding English custom. With this single exception, there were probably no features bestowed upon the early State Senates which

*Charters and Constitutions, II., 1286.
†*Ibid*, I., 963.
‡*Ibid*, II., 1264.
§*Ibid*, II., 1337.

were not intended to avoid rather than to imitate the peculiarities of the English House of Lords. From these facts it must be evident that the upper house of the new State Legislatures was a direct descendant of the colonial council, modified in structure to the extent necessary to bring it into harmony with republican ideas, and to divest it of those qualities which had made it hitherto an instrument of autocratic authority.*

*The following synopsis shows the provisions made by the several States concerning the structure of the Upper House—including the name, composition, qualification of members, mode and term of election, and qualification of electors:

NEW HAMPSHIRE.—"Senate."—Composed of twelve members, apportioned among electoral "districts,"—must be of the Protestant religion, having a freehold estate of £200 within the State, inhabitants of the State for seven years preceding election, and of the district from which chosen at the time of election,—elected annually by those qualified to vote for representatives. (Charters and Constitutions, II., 1284.)

MASSACHUSETTS.—"Senate."—Composed of forty members, apportioned among electoral "districts,"—must be inhabitants of the State for five years, and of the district at the time of election, having a freehold estate of £300 or a personal estate of £600,—elected annually by those qualified to vote for representatives. (*Ibid*, I., 961.)

NEW YORK.—"Senate."—Composed of twenty-four members, apportioned among electoral "districts,"—must be freeholders chosen out of the body of freeholders,—elected for four years by those possessing a freehold of £100—election by *rotation*, one-fourth of the members chosen each successive year, (*Ibid*, II., 1334.)

NEW JERSEY.—"Legislative Council."—Members apportioned among the counties one for each county,—must have been inhabitants and freeholders for one year in the counties from which chosen, and possessed of £1000 of real and personal estate in the same,—elected annually by those who have resided in the county for one year, and worth £50. (*Ibid*, II., 1311.)

PENNSYLVANIA.—(No provision for an upper house in the first constitution; the bicameral system was adopted by the new constitution of 1790.—*Ibid*, II., 1524.)

DELAWARE.—"Council," or "Legislative Council."—Composed of nine members, three from each county,—must be freeholders in the county from which chosen, and twenty-five years of age,—elected for three years by those qualified as "at present"—election by *rotation*, one-third chosen each year. (*Ibid*, I., 274.)

MARYLAND.—"Senate."—Composed of fifteen members, nine from the western and six from the eastern shore,—must be twenty-five years of age, residents of the State for three years, and having real and personal property to the value of £1000,—elected for five years by "electors of the Senate," who are in turn to be chosen by those qualified to vote for members of the lower house. (*Ibid* I., 822.)

VIRGINIA.—"Senate."—Composed of twenty-four members, one from each electoral "district,"—must be a resident and freeholder of the district, and twenty-five years of age,—elected for four years by persons qualified as "at

In the re-organization of the executive department the States were called upon to establish a chief magistracy which would be deprived of the autocratic character of the previous royal governorship, and yet not entirely divested of executive dignity and efficiency. The struggles of the colonial period had aroused a bitter jealousy of executive authority. Connecticut and Rhode Island, indeed, furnished examples of a truly republican executive, chosen by the people. But these examples were followed only in part by the other States. In New Hampshire, Massachusetts and New York only was the chief magistrate made elective by the people; in the other States he was chosen by the Legislature. In New Hampshire, where popular election was established, the novel provision was introduced that, if no choice was made by the people, the election should be thrown into the Legislature, the house being authorized to select two names from which the Senate should choose the chief executive. The term of this office varied from one to three years. The officer usually preserved the colonial name of "governor;" but in New Hampshire, Delaware, and Pennsylvania, he was called the "president"—which name had also in a few instances been employed in the colonial period.* By the terms of the new constitutions the State governor was made a republican officer, responsible to

present"—election by *rotation*, one-fourth being chosen each successive year. (*Ibid*, II., 1910.)

NORTH CAROLINA.—"Senate."—Composed of one member from each county,—must have been a resident for one year of the county from which chosen, and have possessed in the county 300 acres of land in fee,—elected annually by ballot by freemen, twenty-one years of age, residents of any county in the State for one year, having possessed for six months a freehold of fifty acres in the same county. (*Ibid*, II., 1411.)

SOUTH CAROLINA.—"Senate."—Members apportioned among the parishes and certain specified "districts," one for each parish and either one or two for each district,—must be of the Protestant religion, thirty years of age, having resided in the State for five years, and having, if a resident of the parish or district, a freehold estate of £200, and if a non-resident, a freehold of £7000 in the district which he is chosen to represent,—elected for two years by those qualified to vote for members of the lower house. (*Ibid*, II., 1622.)

GEORGIA.—(No provision for an upper house in the first constitution; the bicameral system was adopted by the new constitution of 1789.—*Ibid*, I., 384.)

* Belknap's "New Hampshire," I., 230.

the people, in whose name he was to execute the laws and command the military and naval forces of the State. In Massachusetts alone was he entrusted with a qualified veto on the acts of the Legislature.* In nearly all the States some provision was also made for the deputy-governor, or vice-president, who should assume the executive office in case of the death or disability of the chief magistrate. This office of deputy-governorship was derived directly from the colonial governments, and was even a feature of the organization of the early trading companies.†

* The provision of the Massachusetts constitution of 1780 is so similar to the subsequent provision of the Federal constitution that it is worthy of notice. It provided that no bill should become a law unless approved by the governor; or if disapproved by him, unless passed by a two-thirds vote of the two houses, or not returned by him within five days after being submitted.—Charters and Constitutions, I., 960.

† The following synopsis shows the provisions made by the several States concerning the Chief Magistrate,—including the name, qualifications, the mode and term of election, and also provisions for a deputy:

NEW HAMPSHIRE.—"President."—Must be of the Protestant religion, an inhabitant of the State for seven years, thirty years of age, having an estate of £500, one-half of which must be freehold,—elected annually by persons qualified to vote for senators and representatives.—(Charters and Constitutions, II., 1287.) The "Senior Senator" to act as chief magistrate in case of the disability of the president. (*Ibid*, II., 1289.)

MASSACHUSETTS.—"Governor."—Must be an inhabitant of the State for seven years, having an estate within the commonwealth of £1000, and must declare himself to be of the Christian religion,—elected annually by persons qualified to vote for senators and representatives. (*Ibid*, I., 964.) A "Lieutenant-Governor," qualified and elected in the same manner as the governor. (*Ibid*, 967.)

NEW YORK.—"Governor."—No qualifications specified,—elected for three years by persons qualified to vote for senators. (Ibid, II., 1335.) A "Lieutenant Governor," elected in the same manner as the governor. (*Ibid*, II., 1336.)

NEW JERSEY.—"Governor" and "President of the Council."—No qualification specified,—elected annually by the joint ballot of both houses. A "Vice-President," elected by the upper house. (*Ibid*, II., 1312.)

PENNSYLVANIA.—"President."—No qualification specified,—elected annually by joint ballot of the House of Representatives and the Executive Council. A "Vice-President," elected in the same manner as the president. (*Ibid*, II., 1545.)

DELAWARE.—"President."—No qualification specified, ineligible for three years after expiration of term,—elected for three years by joint ballot of both houses. In case of disability the speaker of the upper house to be vice-president, with the powers of president. (*Ibid*, I., 274.)

MARYLAND.—"Governor."—No qualification specified, except "a person of wisdom, experience and virtue,"—elected annually by joint ballot of both houses.

What may seem to be the most peculiar feature in the reorganization of the executive department was the provision for some kind of advisory council to the chief magistrate. In the colonial period the council had acted not only as an upper house of the Legislature, but also as a body of advisors to the governor. With the more definite organization of the upper house of the first State Legislatures, a new and distinct body was created to exercise the advisory functions of the previous colonial council. The old colonial council may thus be said to have become differentiated into two separate organs, namely, the State Senate which preserved its legislative and judicial functions, and the new Executive Council which preserved its administrative or advisory functions. This advisory council was established by all the States, except New York and New Jersey, and was intended to share with the chief magistrate the executive functions of the government. It was variously called the "council," the "executive council," the "supreme executive council," the "council of state," the "council to the governor," and the "privy council." Although in two or three cases it received an English name, it does not seem to have had any genetic or structural relation to the English privy council. It was

In case of death, a new governor to be immediately elected in the same manner. (*Ibid*, I., 824.)

VIRGINIA.—"Governor."—No qualifications specified, shall not hold office for more than three successive years, nor be re-eligible until the expiration of four years after being out of that office,—elected annually by joint ballot of the two houses. In case of disability the president of the Council of State to act as "Lieutenant-Governor." (*Ibid*, II., 1910, 1911.)

NORTH CAROLINA.—"Governor."—Must have been an inhabitant of the State for five years, thirty years of age, having a freehold estate worth £1000, not eligible for more than three years in six successive years,—elected annually by joint ballot of the two houses. In case of disability, the speaker of the Senate to exercise the powers of chief magistrate. (*Ibid*, II., 1412.)

SOUTH CAROLINA.—"Governor."—Must have been a resident of the State for ten years, having a freehold of £10,000, and must be of the Protestant religion,—elected bi-ennially by joint ballot of both houses. A "Lieutenant-Governor," qualified and elected in the same manner as the governor. (*Ibid*, II., 1621.)

GEORGIA.—"Governor."—No qualifications specified, ineligible for more than one year in three,—elected annually by the representatives. In case of disability the president of the Executive Council to act as governor. (*Ibid*, I., 378, 380, 381.)

composed of from four to twelve members, who were appointed by the Legislature—except in Pennsylvania, where they were elected by the people. It had usually conferred upon it no distinct and specified functions—only the general duty of advising the chief magistrate in the execution of the laws. It seems to have been nothing else than a device to perpetuate the advisory functions which had from the earliest times been exercised by the colonial council, or the Court of Assistants.*

The general character of the executive authority and the relation of the chief magistrate to the executive council may perhaps best be illustrated by quoting a single passage from the Virginia constitution of 1776:

* The following synopsis shows the provisions made by the several States concerning the Executive Council—including the name, composition, and the mode and term of elections:

NEW HAMPSHIRE.—"Council."—Composed of two senators and three representatives,—elected annually by joint ballot of both houses. (Charters and Constitutions, II., 1289.)

MASSACHUSETTS.—"Council."—Composed of nine senators, chosen annually by joint ballot of both houses. (*Ibid*, I., 967.)

NEW YORK.—No provision for a proper Executive Council. Provision was made for a "Council to revise all bills about to be passed into laws by the Legislature" consisting of the governor, the chancellor, and the judges of the Supreme Court, or any two of them. (*Ibid*, II., 1332.)

NEW JERSEY.—No provision for an Executive Council.

PENNSYLVANIA.—"Supreme Executive Council."—Composed of twelve persons,—elected for three years by the qualified voters of the State; election by *rotation*, one-fourth being chosen each successive year; councillors disqualified from re-election for four years after expiration of term. (*Ibid*, II., 1544.)

DELAWARE.—"Privy Council."—Composed of four members,—chosen annually, two by the upper house and two by the house of assembly. (*Ibid*, I., 274.)

MARYLAND.—"Council to the Governor."—Composed of five members, twenty-five years of age, three years residents of the State and having a freehold of £1000,—chosen annually by joint ballot of both houses. (*Ibid*, I., 284.)

VIRGINIA.—"Privy Council" or "Council of State."—Composed of eight members, chosen by joint ballot of both houses,—"Two members shall be removed by joint ballot of both houses of assembly at the end of every three years and be ineligible for the next three years,"—these vacancies to be filled by new elections. (*Ibid*, II., 1911.)

NORTH CAROLINA.—"Council of State."—Composed of seven members,—elected by joint ballot of both houses. (*Ibid*, II., 1412.)

SOUTH CAROLINA.—"Privy Council."—Composed of the lieutenant-governor and eight other members,—the latter chosen by joint ballot of both houses, by *rotation*, one-half each successive year. (*Ibid*, II., 1621.)

GEORGIA.—"Executive Council."—Composed of members chosen by the representatives out of their own body, two from the representatives of each county, which is entitled to send ten delegates. (*Ibid*, I., 378.)

"A governor, or chief magistrate, shall be chosen annually by the joint ballot of both houses; [he] shall, with the advice of the council of state, exercise the executive power of the government, and shall not under any pretence exercise any power or prerogative by virtue of any law, statute or custom of England. But he shall, with the advice of the council of state, have the power of granting reprieves or pardons, except when the prosecution has been carried on by the house of delegates; [he] shall not prorogue or adjourn the assembly during their sittings, nor dissolve them at any time."

The chief magistrate of the State, although occupying the same relative position in the government as before, was thus shorn of all the royal features which made the previous governors obnoxious to the people.

Very little need be said in this sketch regarding the judicial system. So far as is manifest, no important changes were made in the form and jurisdiction of the courts. The chief provisions which were necessary were those relating to the appointment of the judges, which had hitherto been largely under the control of the crown. Some States followed the examples of Connecticut and Rhoad Island, which vested the power of appointing judges in the Legislature; while the other States conferred the appointing power upon the governor and his council, or as in the case of New York, upon a special council of appointment consisting of one senator from each "great senatorial district." The English common law and methods of procedure, which had already been accepted so far as they were adapted to the peculiar circumstances of the colonists, remained in force under the State governments, except when superseded by statute law.

In this sketch of the evolution of the colonial governments and their emergence into the first State constitutions I have sought to illustrate the principle of continuity in the growth of American political institutions. The theory that the first State governments were copies of the contemporary government of England is no more tenable than the theory that the subsequent federal government was such a copy. The primitive elements upon which the institutions of this country were

based were, of course, derived ultimately from foreign sources; but in being translated to a new soil they were brought into new relations, and in the process of their development they acquired an independent character such as they had not previously possessed. It is true that the people who made up the early colonies were largely of English origin; but it is also true that they represented only a part, and that the most liberal and progressive part of the English nation. It is also true that they brought with them certain local institutions; but these were mainly the institutions which had survived from the Anglo-Saxon period, and had not been entirely overcome by the centralizing influence of the British crown. They also brought with them certain constitutional rights derived from Magna Charta; but these were the rights which in the time of the Tudors and Stuarts seemed no longer the possession of English subjects. They finally brought with them certain forms of political organization; but these were derived not from the structure of the British monarchy, but from the charter of a subordinate body-politic, the trading company, which charter also furnished the prototype of a written constitution. The migration of the English to America was, in fact, a process of selection, by which the elements most conducive to the growth of republican institutions were translated to an environment more favorable to such growth than that which existed in the mother country.

From the time of their first settlement in America to the formation of the first State constitutions the colonists pursued an independent and continuous course of political progress, in which the spirit of republicanism became harmoniously blended with republican forms. The representative system which grew up in this country, while remotely derived from instincts common to the Teutonic race, took its shape from the peculiar needs of the American people, and acquired a character far more democratic and pure than the contemporary system in England, being in its American form inconsistent with rotten

boroughs,* aristocratic control, and multiple representation.† The system of a double legislature had an origin and development in America which separates it entirely from the analogous system in England, springing as it did from the very structure of the colonial assemblies, and excluding from its organization every form of feudal privilege which was the principle upon which the division of the two houses in the mother country was ultimately based. The very idea of a written constitution itself, which recognizes the government as the legally established organ of the sovereign power, grew out of those peculiar circumstances in which thirteen dependent colonies, deriving their political powers from expressed grants of the sovereign crown, were transformed into thirteen independent governments, deriving their powers from the expressed will of the sovereign people. The sovereignty of the people was substituted for the sovereignty of the crown; and a written constitution took the place of a written charter as the instrument which determined the powers of the government and secured the rights of the subject.

To claim that the American political system has a distinctive history and character of its own does not involve any disparagement of the British constitution. Having a common origin in the instincts and institutions of the Teutonic race, having a common basis in the principles of Magna Charta, they have, since the seventeenth century, presented two distinct phases in the evolution of democratic ideas. In the one case we see republicanism adjusting itself to the existing forms of an aristocratic and monarchical government. In the other case we see republicanism casting aside these forms and substituting those which are believed to be more in harmony with the republican spirit. It is one thing to regard the American colonists as devoted to those chartered

* The first constitution of Virginia provided that a city should cease to send delegates when its population became less than one-half of that of any county. (Charters and Constitutions, II., 1910.)

† The first constitution of North Carolina provided that no person should be entitled to vote for both town and county representatives. (*Ibid*, II., 1511.)

rights which many centuries before had been extorted from King John. It is quite another thing to regard them as reproducing, either consciously or unconsciously, the governmental forms under which those rights were for a time ignored and trampled under foot. The right to a share in their own government, the right of trial by jury, the right to say how far their property should be given to public uses, they still clung to while building up their own primitive States. The elements of the British constitution, which the American people claimed as their inheritance, were not so much the customary forms which entered into the structure of the British government as those chartered privileges which might serve to protect them from the supervision and interference of autocratic power. What they most desired was to be let alone and to work out their own political salvation. And it was precisely when and where they were least hampered by foreign control, and least influenced by foreign models, that they developed those political features which have become the most distinctive characteristics of the American constitutional system.

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